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No. 483

In the

Supreme Court of the United States

OCTOBER TERM, 1969

ATLANTIC RICHFIELD COMPANY, et al.,
Petitioners,

v.

W. O. HILTON, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE 12TH SUPREME JUDICIAL DISTRICT OF TEXAS AT TYLER

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Atlantic Richfield Company, previously known as The Atlantic Refining Company, and John W. Melton and wife, Virgie Melton, C. L. Hanna, Frances Walker McCain, Edson Petroleum Company, Southeastern Public Service Company, Domino Corporation, William G. Webb, Trustee for Empire Trust Company, Empire Trust Company, E. Fred Herschbach, Fredrick J. Herschbach, and Robert A. Herschbach, Petitioners, pray that a Writ of Certiorari issue to review the judgment of the Court of Civil Appeals for the 12th Supreme Judicial District of Texas at Tyler, and the judgment of the Supreme Court of Texas refusing writ of error on ground of no reversable error.

OPINIONS BELOW

(1) Opinion of U. S. Court of Appeals 5th Circuit in *W. O. Hilton et al., Appellants v. The Atlantic Refining Company, Appellee* is reported in 327 F. 2d 217. Opinion printed Appendix A pps. 1-4.

(2) Opinion of Court of Civil Appeals for 12th Supreme Judicial District of Texas in *Atlantic Richfield Company et al., Appellants v. W. O. Hilton et al., Appellees* is reported in 437 S.W. 2d 347. Opinion printed Appendix B, pps. 5-21.

JURISDICTION

1. Judgment of the state Court of Civil Appeals in 437 S.W. 2d 347 was entered on January 30, 1969. Timely motions for rehearing filed on February 12, 1969 were denied on February 20, 1969 (Appendix Z, pps. 111-118 and Appendix Z-1, pps. 119-120). Application for writ of error timely filed on March 19, 1969 (Appendix Z-2, pps. 121-124) was refused on May 7, 1969 by Supreme Court of Texas on the ground of no reversable error (Appendix C, pps. 22-23), and timely motion for rehearing filed on May 22, 1969 (Appendix Z-3, pps. 125-127) was denied on June 11, 1969 (Appendix C, pps. 22-23). The state court judgment became final on June 11, 1969 and is now subject to Order dated June 26, 1969 of state Court of Civil Appeals staying the mandate and enforcement of same pending action taken by this Court on this Petition (Appendix D, pps. 24-25).

2. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3). The state Court of Civil Appeals in 437 S.W. 2d 347, 351 (Appendix B, pps. 9-11) held directly

contrary to the prior Opinion in this case in U. S. 5th Circuit Court in 327 F. 2d 217, 219 (Appendix A at p. 3 under (2)) in that:

Atlantic, as sole defendant and citizen of Pennsylvania, removed case to U. S. District Court on diversity of citizenship (Appendix F, pps. 29-32), and said court denied Respondents' motion to remand to make parties defendant destroying diversity (Appendix H, pps. 35-36). Pre-trial Order including stipulations of parties were made in and approved by said Court that Atlantic's oil and gas lease was in production and pooled, and contested issues related to sufficiency of lease description (Appendix I, pps. 37-59. See pps. 40, 42-45 and 54-57). After judgment on merits in favor of Atlantic (Appendix K, pps. 64-66) Respondents appealed from Order denying remand and designated pre-trial order including stipulations and findings of fact and conclusions of law of Federal District Court as part of record for their appeal (Appendix L, pps. 67-68). Judgment of the U. S. 5th Circuit Court in 327 F. 2d 217, 219 (Appendix A at pps. 1-4) was entered on January 9, 1964, holding (Appendix A p. 3) the royalty owners were indispensable parties "because if the lease were removed from the unit for want of sufficient description, the lease would terminate for lack of production, *since it is presently held enforced by production within the unit, but off the lease*", and "*since it would no longer be validly unitized*", and said royalty owners "would be denied their present rights to royalties." The Court then held since joinder of these indispensable parties would result in a jurisdictional defect which is cause

for remand, that judgment be reversed with directions to remand to the state court. (Emphasis added). Rehearing was denied February 19, 1964 (Appendix A, pps. 1-4).

Judgment of state Court of Civil Appeals in 437 S.W. 2d 347, 351 was entered on January 30, 1969 wherein court held directly contrary to U. S. 5th Circuit Court and U. S. District Court by holding said stipulations involved only a question of law and were not binding on the court or parties, and "since the stipulated issues before the Federal Court involved only a question of law" Respondents "were not barred from amending their pleadings and proving that as a matter of law, the Atlantic-Hilton lease had terminated because of improper exercise of the pooling privilege" under the doctrine announced in a state court decision made over three years subsequent to said stipulations and subsequent to the U. S. 5th Circuit Court decision. Motion for rehearing was denied on February 20, 1969 (Appendix B pps. 5-21. See pps. 9-11).

3. Federal questions were raised as shown in said state Court of Civil Appeals Opinion 437 S.W. 2d 347, 351 (Appendix B pps. 5-21. See 9-11), where it is recited while the case was pending in Federal Court written stipulations were made and entered in open court, and included Respondents stipulation the issues related to sufficiency of lease description; that upon remand to state court Petitioners herein contended said stipulations are binding contracts in full force and Respondents should not be permitted to assert Atlantic exceeded its authority to pool or that said tracts were not pooled; and contended further Respondents are

not entitled to recover on an assertion directly opposite to that upon which Respondents recovered judgment against Atlantic in Federal Court; and that Petitioners points of error involve the effect of the stipulations in the Pre-trial Order. Petitioners' said points were overruled by the state court which held directly opposite to U. S. 5th Circuit Court by holding the stipulations were not binding on either the court or the parties, and that Atlantic's lease was not in production or pooled. (Appendix B pps. 5-21. See pps. 9-11).

Petitioners again raised the Federal questions by Points of Error Nos. 1-15 and No. 40 assigned in their motions for rehearing in state Court of Civil Appeals (Appendix Z pps. 111-118, and Appendix Z-1 pps. 119-120), and all of which were overruled in said Court's opinion.

Said Federal questions were again raised by Petitioners Points of Error Nos. 1, 2, 3, 4 and 13 in their application for writ of error in Supreme Court of Texas (Appendix Z-2, pps. 121-124), which was overruled by said Court refusing same on ground of no reversable error (Appendix C, pps. 22-23).

Said Federal questions were again raised in Petitioners Assignment of Errors Nos. I, III and V in their motion for rehearing filed in Supreme Court of Texas (Appendix Z-3, pps. 125-127), which were overruled by said Court on June 11, 1969 (Appendix C, pps. 22-23).

Since the state Court of Civil Appeals has expressly considered and determined the Federal questions as above stated, it is not considered to be here necessary to set forth

in detail the manner in which Petitioners raised said questions in defense of the suit in State District Court and in State Court of Civil Appeals. However in the event the Court should be of the opinion same is required, reference is here made to below paragraph 10 of Statement Material To Consideration Of Questions Presented.

4. Authorities are cited below under Reason Why Writ Should Be Granted.

QUESTIONS PRESENTED

Stipulations were made in and approved by the Federal Court that Atlantic's lease was in production and pooled and the contested issues related to sufficiency of lease description. The stipulations were designated by Respondents as a part of record for appeal from Order denying remand to state court, and were acted upon by U. S. 5th Circuit Court in holding that since Atlantic's lease was in force by production and unitization, the royalty owners in the pooled unit were indispensable parties and this required the U. S. District Court judgment on merits in favor of Atlantic be reversed and case be remanded to state court. The state court then held directly to contrary that the stipulations were invalid as involving a question of law and were not binding on the court or parties and declared Atlantic's property rights under the lease terminated.

The questions presented are:

1. Whether the state court denied Petitioners a right arising under the authority of the United States by hold-

ing the stipulations of the parties approved and acted upon by the Federal Court as the basis for the reversal and remand, were not binding on the state court or parties after remand?

2. Whether Petitioners were denied a right under Art. IV, Sec. 1 of the U. S. Constitution and 28 U.S.C. Sec. 1738 in that the state court refused to give full faith and credit to the approval of the stipulations by the Federal Court and to the judgment of the U. S. 5th Circuit Court based on same?

3. Whether Petitioners by the state court judgment were denied federally created rights under the stipulations approved by the U. S. District Court under Federal Civil Procedure Rules 16 and 81(c) authorized by 28 U.S.C. Sec. 2072 and acted upon by the U. S. 5th Circuit Court as the basis for the reversal and remand to state court?

4. Whether the state court denied Petitioners due process and equal protection of law under the 14th and 5th Amendments to the U. S. Constitution, by the state court judgment terminating Petitioners' property rights in contravention of the stipulations approved and acted on by the Federal Court?

5. Whether the state court denied Petitioners due process and equal protection of law under the 14th and 5th Amendments to the U. S. Constitution in that after the Federal Court held against Atlantic *because the lease was in production and pooled,* (as stipulated), the state court then held against Atlantic by holding the Stipulations invalid and *because of this the lease was not in production or pooled?*

FEDERAL CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF COURT UNDER WHICH PETITIONERS WERE DEPRIVED OF THEIR RIGHTS

(1) Federal Statute 28 U.S.C. Sec. 1257 provides in pertinent part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:"
>
> (1) and (2) — not here pertinent.
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

(2) Article IV, Sec. 1 of the Constitution of the United States provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

(3) Federal Statute 28 U.S.C. Sec. 1738 provides:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts

within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

(4) Federal Civil Procedure Rule 16 provides in pertinent part:

"In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

(1) the simplification of the issues;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(6) such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice."

(5) Federal Civil Procedure Rule 81(c) provides in pertinent part:

"These rules apply to civil actions removed to the U. S. district courts from the state courts and govern procedure after removal."

(6) Federal Statute 28 U.S.C., Sec. 2072 provides in pertinent part:

> "The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts of the United States in civil actions.
>
> Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.
>
> Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported.
>
> All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court."

(7) The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> "; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(8) The Fifth Amendment to the Constitution of the United States provides in pertinent part:

> "; nor shall any person * * * be deprived of life, liberty or property, without due process of law;"

STATEMENT MATERIAL TO CONSIDERATION OF QUESTIONS PRESENTED

1. Suit involves oil and gas lease on 82.713 acres in Fairway Oil Field in Henderson County, Texas. Respondents executed lease which was assigned to Petitioner Atlantic. On November 22, 1961, Respondents, citizens of Texas, filed suit in state court against Petitioner Atlantic, citizen of Pennsylvania, as sole defendant to remove as cloud on title unit declaration for a 160 acre oil unit filed by Atlantic under said lease, and which lease Respondents claimed to be invalid because of a lack of sufficient description of land. (Appendix E, pps. 26-28).

2. Atlantic on diversity of citizenship removed suit to U. S. District Court (Appendix F, pps. 29-32). Respondents filed motion to remand to state court on ground their suit affected interests of royalty owners in the pooled unit who Respondents had not made parties, and who Respondents asserted were indispensable parties whose joinder would destroy diversity and jurisdiction of Federal Court. (Appendix G, pps. 33-34).

3. U. S. District Court denied the motion to remand, and on pre-trial hearing Atlantic and Respondents entered into written stipulations which were approved by the court, and whereby it was agreed Atlantic had drilled a producing oil well within the pooled unit but off the lease, and had made the declaration of unit "whereby a 160 acre unit was formed for the production of oil" and "whereby there was pooled and combined exactly 80 acres from the J. W. Melton lease and exactly 80 acres from the

W. O. Hilton, et al, lease making the total of 160 acres," and whereby it was stipulated the remaining 2.713 acres "has been pooled as a part of" a 160 acre oil unit on the South, and it was further stipulated the contested issues related to the sufficiency of the land description in the lease. (Appendix I pps. 37-59, See pps. 40, 42-45 and 54-57).

4. U. S. District Court then heard the case on its merits without a jury and concluded said lease was valid and subsisting, that Respondents had ratified same and ownership of Atlantic, and had estopped themselves to contest validity of same as well as ownership of Atlantic, and that the declaration of unit was valid and in full effect. (Appendix J pps. 60-63). The Court reciting it had considered the pleadings, pre-trial stipulations, pre-trial order, and the evidence, rendered judgment that Respondents recover nothing and that Petitioner Atlantic recover the title and possession of the subsisting oil and gas leasehold estate. (Appendix K pps. 64-66).

5. Respondents appealed to U. S. 5th Circuit Court from Order denying remand and said court held that while denominated a suit to remove cloud, the claim of Respondents' suit was that the oil and gas lease was invalid for lack of sufficient description. The theory of Respondents was that if the lease was invalid for lack of a sufficient description, then Atlantic had no lease and no authority to pool. Respondents in their Designation of the Record for their Appeal included the Pre-Trial Order containing the above stipulations, and the Findings of Fact and Conclusions of Law by U. S. District Court. The U. S. 5th Circuit Court

held the royalty owners were indispensable parties "because if the lease were removed from the unit for want of sufficient description, the lease would terminate for lack of production, *since it is presently held enforced by production within the unit but off the lease,*" and if Respondents "won the suit and reentered, the lease would terminate *since it would no longer be validly* unitized." (Emphasis added). (Appendix A pps. 1-4 at p. 3).

6. U. S. 5th Circuit Court then held that since joinder of the royalty owners would destroy diversity of citizenship resulting in a jurisdictional defect, that the judgment must be reversed with directions to remand to state court. The case was remanded to state court on March 24, 1964. After remand on April 20, 1967 Respondents amended their pleadings making the royalty owners defendants for first time, and for first time acknowledged lease description was valid, but then alleged for first time that Atlantic had exceeded its authority under said lease to pool or unitize, and there never having been a well drilled on or production had from a well drilled on the 82,713 acres that Atlantic's lease terminated. Said amended pleadings while naming the royalty owners as defendants alleged the title to the "royalty interest is not an issue in this action" and excepted same from any recovery by Respondents for title and possession. (Appendix M pps. 69-77).

7. Respondents filed motion for summary judgment. Petitioners filed amended answers and motions for summary judgment including the defenses plead by reason of the

stipulations and judgments in Federal Court. (Appendix N pps. 78-88, and Appendices O through V pps. 89-100).

8. The state district court granted Respondents judgment holding the lease owned by Atlantic was not in production and not unitized by reason of which it had terminated, and that the alleged cloud cast on Respondents' title by the declaration of unit by Atlantic be removed, and that Respondents recover title and possession of the mineral fee estate except as to the royalty interest not in issue. (Appendix W pps. 101-105).

9. The state Court of Civil Appeals affirmed said judgment holding the stipulated issues before the Federal Court involved only a question of law and were not binding on the Court or parties, and Respondents were not barred on remand to state court from amending and proving that as a matter of law the lease had terminated because of improper exercise of the pooling privilege. Said court then overruled Petitioners' points of error relating to the defenses urged by reason of the stipulations and the judgment of the U. S. 5th Circuit Court remanding the case. (Appendix B pps. 5-21. See pps. 9-11).

10. Under Jurisdiction under 3. above, it is believed a complete statement has been made as to the stage in the proceedings and the manner in which the Federal questions sought to be reviewed were raised and based on. In the event the recitation of the state Court of Civil Appeals in its opinion and what is stated above is not considered complete then reference is made to the special exception and special pleadings of said stipulations and federal court

judgment as defenses in Paragraphs 1, 6, 7 and 8 of Atlantic's Third Amended Answer in state district court (Appendix N pps. 78-88); and Paragraph 1. in the Answers of the royalty owners filed in state court including their adoption of the Answer filed in behalf of Atlantic (Appendices O through T pps. 89-94), and all of which were overruled by the state District Court judgment in favor of Respondents (Appendix W pps. 101-105).

Further reference is made to Paragraph 2, Subsections (2), (3) and (4) of Atlantic's motion for summary judgment in state district court including the attached Exhibit No. 15 being copy of Opinion of the U. S. 5th Circuit Court, and Exhibit No. 16 being copy of pre-trial order and stipulations approved by U. S. district court (Appendix U pps. 95-98); and motion for summary judgment by royalty owners John W. Melton et al. filed in state district court adopting the motion and Exhibits filed by Atlantic (Appendix V pps. 99-100); and which said motions were overruled by the state district court judgment in favor of Respondents (Appendix W pps. 101-105); reference is further made to Points of Error Numbers 1, 2, 3 and 7 made in Atlantic's brief in state Court of Civil Appeals urging the stipulations and 5th Circuit Court judgment as defenses (Appendix X pps. 106-108); and the adoption by royalty owners John W. Melton et al. of points of error made in Atlantic's brief filed in state Court of Civil Appeals (Appendix Y pps. 109-110); and all of which points were overruled in the state Court of Civil Appeals opinion (Appendix B pps. 5-21. See pps. 9-11).

REASONS WHY WRIT SHOULD BE GRANTED

1. Substantial and far reaching federal questions are presented because if the state court judgment is allowed to stand then state courts can hold the grounds acted on by federal courts as the basis for judgment to be invalid and not binding on the state court or the parties. The effect would be to undermine the integrity of all federal court judgments not concurred in by the state court, leaving them naked decisions without any stated basis in law or fact, and raising questions as to whether such judgments should be considered of any force or effect.

2. The action at the time of removal was one as to which U. S. District Court had original jurisdiction, 28 U.S.C. Sec. 1441(a). Subsequently question of remand to make additional parties to destroy diversity of citizenship was raised by Respondents. This federal question was decided by the federal court judgment based on what was stipulated by the parties under approval of federal court that the lease was in production and pooled, subject to sufficiency of lease description. Holding by U. S. 5th Circuit Court that its decision was made because lease was in production and pooled was an element in favor of and under which Petitioners claim. The state court allowed Respondents to repudiate the stipulations and refused to give effect to the stated basis for the judgment of the Federal Court. The stipulations made in and approved by federal court did not become a subject of dispute until repudiated by Respondents in state court. U. S. Supreme Court has jurisdiction to review the state court decision as involving a denial of a title

or rights claimed under authority exercised under United States. See *Donohue v. Vosper*, 243 U.S. 59, 64 and 61 L. Ed. 592, 596.

3. Jurisdiction to determine effect given approval of stipulations by Federal District Court, and effect to be given U. S. 5th Circuit Court judgment in state court is conferred on Supreme Court of United States by provisions of the Federal Constitution declaring supremacy of Constitution and extent of judicial power and authorizing legislation to make same effective. Art. IV Sec. 1 of U. S. Constitution, and 28 U.S.C., Sec. 1738. Approval of stipulations by Federal District Court and judgment of U. S. 5th Circuit Court are entitled to full faith, credit and effect in state court. Stipulations having been approved and acted on by Federal Court were valid in Federal Court and being valid in Federal Court were valid and binding on state court. Refusal of state court to give full faith and credit to said stipulations and U. S. 5th Circuit Court decision is reviewable in Supreme Court by writ of certiorari. *Stoll v. Gottlieb* 305 U.S. 165, 167, 170-174, 175 and 83 L. Ed. 104, 106-108, 110. Also *Knights of Pythias v. Meyer* 265 U.S. 30, 33, and 68 L. Ed. 885, 888.

4. Record leaves no doubt that rights under full faith and credit clause of U. S. Constitution were involved and necessarily passed on by state court's judgment stipulations and judgment of Federal Court were not binding on state court or parties. Supreme Court of United States has jurisdiction to review in such a case even if such rights had not been expressly asserted below because they were necessarily

passed on. It is not necessary to inquire how and when a Federal question was raised when it appears such question was actually considered and decided. *Manhattan Life Insurance Co. v. Cohen*, 234 U.S. 123, 134, and 5 L. Ed. 1245, 1253.

5. Parties had right to make stipulations and Federal Court had right to approve them under Federal Civil Procedure Rules and when made and approved a federal right was created which when acted upon by 5th Circuit Court basing its decision in accord with same, was not thereafter subject to being nullified by the state court. Federal Civil Procedure Rules 16 and 81(c), and 28 U.S.C., Sec. 2072. Since Petitioners defenses in state court were based on the assertion of their federal rights under the stipulations and 5th Circuit Court judgment the case is ripe for adjudication in the Supreme Court of United States. *Hammerstein v. Superior Court of State of California*, 340 U.S. 622, 623, and 95 L. Ed. 586, 587.

6. Atlantic was denied due process and equal protection of law in that after having the judgment on merits it had obtained in Federal District Court reversed by U. S. 5th Circuit Court and case remanded to state court because, as had been stipulated, Atlantic's lease was in production and pooled, the state court then held directly to the contrary that Atlantic could not recover because the stipulations approved and acted on by the Federal Court were not valid and binding on the state court or parties, and Atlantic's lease was not in production or pooled. U.S.C. Constitution of United States Amendments 14 and 5. The due process

and equal protection of law issues were within the clear intendment of and were sufficiently presented by Petitioners assertion of the stipulations and judgment in Federal Court as defenses to Respondents suit. *Braniff Airways v. Nebraska State Board of Equalization.* 347 U.S. 590, 599, and 98 L. Ed. 967, 977.

7. It affirmatively appears from the record that the federal questions as to the validity of the Federal Court approved stipulations and judgment were presented to the state Court of Civil Appeals, and that its decision on the federal questions was necessary to its determination of the cause. Otherwise the state court under said stipulations and judgment would have had to hold for Petitioners that the lease was in production and pooled. The state court in its Opinion recited the specific federal issues before it and then expressly considered and determined same, and in such case the Supreme Court of the United States does not inquire into framing of the issues in the first instance. *Raley v. State of Ohio,* 360 U.S. 423, 436-7, and 3 L. Ed. 2d 1344, 1354.

The federal questions and the grounds therefor were fairly brought to the state court's attention and this is shown by the record and being so are regarded as having been adequately presented. *New York ex rel. Bryant v. Zimmerman* 278 U.S. 63, 67.

8. The state court, by holding the Federal Court stipulations and judgment invalid and not binding on the state court or parties, exercised its jurisdiction in such a way that case could have been brought to Supreme Court of United

States had the questions been raised prior to original disposition. *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 128, and 89 L. Ed. 2092, 2100.

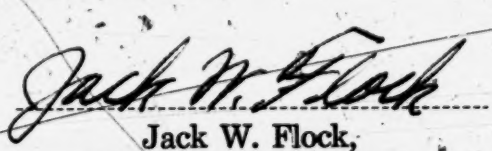
APPENDIX

Appendix is under separate cover filed herewith.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This certifies that copies of this Petition for Writ of Certiorari have been served upon counsel of record for Respondents by enclosing copies in sealed envelopes and depositing same in the United States Post Office at Tyler, Texas, with first-class postage prepaid and sent by Certified mail, and addressed to counsel of record at their post office addresses as follows:

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Dated this 15th day of August, 1969.

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